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IN THE

Supreme Court of the United States

STEVEN LOFTON, *et al.*,

Petitioners,

v.

SECRETARY, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MOTION OF THE CHILD WELFARE LEAGUE OF AMERICA FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS AND BRIEF AMICUS CURIAE

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MOTION OF THE CHILD WELFARE LEAGUE OF AMERICA FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS

Pursuant to Rule 37.2 of the rules of this Court, the Child Welfare League of America (CWLA) respectfully moves this Court for leave to file the attached brief *amicus curiae* in support of the petition for a writ of certiorari to review the judgment of the court of appeals for the Eleventh Circuit in *Lofton* v. *Secretary of Department of Children & Family Services*, 358 F.3d 804 (11th Cir. 2004). Petitioners have consented to the filing of the attached brief. Respondents have declined to consent. Petitioners' letter consenting to the filing of this brief is on file with the Clerk of the Court.

In this case, the court of appeals held that Florida's categorical exclusion of gay men and lesbians from consideration as adoptive parents, Fla. Stat. ch. 63.042(3),

was rationally related to the State's goal of promoting the best interests of children. This holding is of fundamental interest to the CWLA, an 84-year-old association of more than 1000 public and private child and family-service agencies that collectively serve more than 3 million abused, neglected, and vulnerable children and youth every year.

CWLA is in a unique position to aid the Court in its consideration of the issues presented. Since its founding in 1920, CWLA has been a leader in the development of quality programming, practices, and policies in all areas of child welfare and child well-being. CWLA's Standards of Excellence for Adoption Services reflect what the child welfare field recognizes as the best child welfare practices. These standards set forth, among other things, principles for evaluating applicants as adoptive parents. Accordingly, CWLA respectfully requests that the Court grant this motion for leave to file a brief *amicus curiae*.

Respectfully submitted,

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Amicus curiae Child Welfare League of America (CWLA) respectfully submits this brief in support of the petition for a writ of certiorari.[1]

INTEREST OF AMICUS CURIAE

The CWLA is an 84-year-old association of more than 1000 public and private child- and family-service agencies that collectively serve more than 3 million abused, neglected, and vulnerable children and youth every year. Since its founding in 1920, CWLA has been a leader in the development of quality programming, practices, and policies in all areas of child welfare and child well-being. CWLA's Standards of Excellence for Adoption Services reflect what the child welfare field recognizes as the best child welfare practices. These standards set forth, among other things, principles for evaluating applicants as adoptive parents. In all of its work, CWLA strives to ensure that every child and young person is provided with the best opportunity to achieve his or her full potential.

REASONS FOR GRANTING THE WRIT

This case directly and adversely affects the welfare of children. The court of appeals incorrectly held that Florida's categorical exclusion of gay men and lesbians from consideration as adoptive parents, Fla. Stat. ch. 63.042(3), was rationally related to the State's goal of promoting the best interests of children. In fact, Florida's policy is contrary to the best interests of the thousands of children in Florida awaiting a permanent home. It bears no rational relationship to the stated goals of Florida's adoption statute or any other child welfare aim.

Petitioners and many other prospective parents who happen to be gay are prepared to open their hearts and their homes to children in need, to make the sacrifices and to

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than the CWLA and its counsel made any monetary contribution toward the preparation and submission of this brief. Petitioners' letter consenting to the filing of this brief is on file with the Clerk of the Court.

experience the joys that come with raising children. Yet despite a chronic and severe shortage of qualified parents, Florida has decided to ban this one group of willing parents from adopting—even if they otherwise pass the rigorous screening process that Florida imposes to ensure that prospective adoptive parents are qualified and even if they would be the best fit for a particular child in need of a permanent home. The result is to deny many children the chance to be adopted by loving, caring parents with whom they would flourish.

Florida's ban is a radical departure from the nationwide consensus that adoption decisions should be made by professionals on a case-by-case basis and based on the best interests of the child. Indeed, Florida is alone among the States in excluding gay men and lesbians from the pool of adoptive parents. The widespread view in the field is that a categorical prohibition on adoption by gay men and lesbians lacks a rational relationship to any legitimate child welfare goal and works against the interests of children. The positions of every authoritative child welfare or child health organization of which the CWLA is aware contradict the assumption—implicit and explicit in the court of appeals' opinion—that gay and lesbian parents and the children being raised by them are inferior to heterosexual families.

Petitioners' constitutional claims present important questions of federal law and, from the perspective of the CWLA, crucial issues for the welfare of children. This Court should grant a writ of certiorari.

I. FLORIDA'S CATEGORICAL BAN ON ADOPTION BY GAY PARENTS UNDERMINES THE PREVAILING INDIVIDUALIZED, CASE-BY-CASE APPROACH TO ADOPTION PLACEMENT AND IS DETRIMENTAL TO THE BEST INTERESTS OF CHILDREN

Florida's policy denies thousands of children the opportunity to be adopted by loving, capable, and willing parents. In this manner, Florida "spites its own articulated goal[]," *Stanley* v. *Illinois*, 405 U.S. 645, 653 (1972), of serving the best interests of Florida's adoptive children

through provision of permanent homes suited to their individual needs.

A. As Florida Recognizes, Adoption Is In The Best Interest Of Children Whose Parents Either Cannot Or Will Not Raise Them

There is no doubt adoption by a loving and capable parent is in the best interests of children whose biological parents either cannot or will not take care of them. Florida itself has recognized adoption as "the primary permanency option" for a child who cannot be reunited with his or her biological parents. Fla. Stat. ch. 39.621(2). Florida's strong policy is supported by widespread agreement among child welfare professionals that "[a]doption works." Myrna L. Friedlander, *Adoption: Misunderstood, Mythologized, Marginalized*, 31 Counseling Psychologist 745, 748 (2003). The consensus among experts is that adopted children "function more adequately at the personal, social, and economic level compared with those who were formerly fostered and, particularly, those who grew up for a large part of their lives in institutions."[2] John Triseliotis & Malcolm Hill, *Contrasting Adoption, Foster Care, and Residential Rearing*, in *The Psychology of Adoption* 107, 107 (David M. Brodzinsky & Marshall D. Schechter eds., 1990).

In particular, adoption facilitates the development of an attachment relationship—a "reciprocal, enduring, emotional, and physical affiliation between a child and a caregiver." Beverly James, *Handbook for Treatment of Attachment-Trauma Problems in Children* 2 (1994). Attachment relationships form "the cornerstone for healthy psychological adjustment, affecting development not only in infancy and childhood but in adulthood as well." David M. Brodzinsky et al., *Children's Adjustment to Adoption:*

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[2] *See also* Daniel Pilowsky, *Psychopathology Among Children Placed in Family Foster Care*, 46 Psychiatric Servs. 906, 906, 908-909 (1995) (finding children placed in foster care exhibit greater prevalence of depression, theft, drug use, vandalism, and gang membership than adopted children or children raised by their biological parents).

Developmental and Clinical Issues 13 (1998). Because adoption provides security and stability for the child, it is the placement option most likely to foster strong attachment relationships for children whose biological parents are unavailable and therefore unable to care for them.

The alternatives to adoption simply cannot provide the stability and the security needed for optimal development. The Florida Legislature has specifically found that foster care "often fails to meet the needs of children," Fla. Stat. ch. 409.1673(1)(a)(1), in part because children "are often inappropriately and repeatedly placed in the foster care system ... [and] lack a stable environment," Fla. Stat. ch. 409.1673(1)(b). Multiple placements mean multiple caregivers and prevent a child from forming a lasting attachment to a nurturing, caring adult.[3] In addition to lacking the stability of adoption, foster care and legal guardianship do not—as the court of appeals recognized—have "the societal, cultural, and legal significance [of] adoptive parenthood, which is the legal equivalent of natural parenthood." Pet. App. 34a. Thus, even for a fortunate child in a favorable long-term foster care or guardianship placement, adoption is preferable.

B. To Meet The Needs Of Children Awaiting Adoption, Well-Established Child Welfare Practice Rejects Categorical Exclusions Of Adoption Applicants In Favor Of Individualized Evaluation Of Each Potential Parent-Child Match

Over the past 30 years, the States have moved decisively away from the narrow view that adoption should occur only when placement can be found in what were once

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[3] *See* David M. Brodzinsky & Ellen Pinderhughes, *Parenting and Child Development in Adoptive Families*, in 1 *Handbook of Parenting* 279, 288 (Marc H. Bornstein ed., 2d ed. 2002) (stating "risk for attachment problems" increases when children "experience multiple caregivers"); Am. Acad. of Pediatrics, *Developmental Issues for Young Children in Foster Care*, 106 Pediatrics 1145, 1146 (2000) (stating multiple placements inhibit child's "relationship with an adult who is nurturing, protective, and fosters trust and security").

viewed as "ideal families": young, middle-class, married couples. Until the 1960s and 1970s, many States excluded adoption applicants who fell short of that ideal, such as adults with physical disabilities, single adults, older couples, and low-income families. *See* Alice Bussiere, *The Development of Adoption Law*, 1 Adoption Q. 3, 6 (1998); *see also* Brodzinsky & Pinderhughes, *supra* n.3, at 280-281. States also restricted certain other adoption placements, such as interracial adoptions. *See* Brodzinsky & Pinderhughes, *supra* n.3, at 299-300. Although many States and adoption agencies may have previously "thought it better to leave a child in foster or institutional care without an adoptive home rather than to place the child in a 'mismatched' home," the "goal of providing a child with a permanent home has become primary." Joan Heifetz Hollinger et al., 1 Adoption Law and Practice § 3.06[1], at 3-39 to 3-40 (2003); *see also* Bussiere, *supra*, at 7.

By broadening the pool of prospective adoptive parents to include those "who had previously been excluded, such as older couples with children and single parents," States improved the ability of professional child welfare experts to better match a child's individual needs with the strengths and skills offered by each potential adoptive parent. Bussiere, *supra*, at 8. No two children (or adults) are exactly alike: one child may fare better if his or her adoptive parents have other children, another may be better off as an only child. A child, such as John Doe in this case, may have medical problems and might benefit from having an adoptive parent with medical expertise. All other things being equal, the more potential adoptive parents, the greater the likelihood that adoption experts will be able to make a placement that promotes the child's best interests.

Florida has generally followed the trend toward permanent placement based on individual evaluations and away from excluding entire groups from the pool of adoptive parents. *See* Fla. Stat. ch. 63.022(2) (stating "the best interest of the child should govern and be of foremost concern"), 63.022(3) (Legislature's intent is to "provide to all children who can benefit by it a permanent family life"). To

facilitate optimal placement, the Florida Department of Children and Families (DCF) conducts a detailed evaluation of each candidate's fitness to parent a particular child.[4] Other than gay men and lesbians, no other group of adults in Florida is categorically prohibited from adopting. Married couples, single adults, adults with physical disabilities, divorced men and women, parents of a different race than the adoptive child—all may adopt.[5] *See* Fla. Stat. ch. 63.042(2), (4); Fla. Admin. Code r. 65C-16.005(1). Even convicted felons are not categorically barred from adopting.[6] The State's categorical exclusion of gay men and lesbians is therefore a striking departure from an otherwise consistent and coherent scheme to match the needs of individual

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[4] Florida has a detailed procedure to ensure the appropriateness of a proposed adoptive placement for the child. *See, e.g.*, Fla. Stat. chs. 63.092(3) (requiring preliminary home study prior to placement in intended adoptive home), 63.125(1) (requiring "final home investigation" before adoption placement becomes final). In determining "which applications for adoption should be approved," the DCF evaluates the "child's choice"; "ability and willingness" of the prospective parent to adopt "some or all of a sibling group"; commitment of the parent to foster the child's knowledge and appreciation of his or her "racial and ethnic heritage"; "child rearing" experience of the parent; stability of the parent's marriage, if applicable; future residency of the parent; parent's income; and the ability of the parent to provide adequate shelter, medical care, attention, and support. Fla. Admin. Code r. 65C-16.005(2) to (3).

[5] The court of appeals was therefore wrong to conclude that Florida promotes adoption only in "optimal" married-couple homes. Florida does not express a preference for married over unmarried couples or singles in the area of adoption. *See* Pet. App. 83a (Barkett, J., dissenting from denial of rehearing en banc). Florida accepts applications to adopt from single adults, *see* Fla. Admin. Code r. 65C-16.005(3)(e), and has placed many adopted children with single parents. Florida's policy, consistent with the overwhelming national consensus, is to encourage adoption, *period*, because adoption by even a single loving parent is better for a child's welfare than living in foster care, group homes, and the like.

[6] For individuals convicted of certain felonies, such as homicide, rape, sexual assault, child or spousal abuse, or child pornography, "[a]pproval shall not be granted" to adopt children who are in state custody. Fla. Stat. ch. 435.045(1)(a). Those individuals are not, however, prohibited from adopting other children.

children with the abilities and circumstances of individual adults.

C. By Categorically Excluding Gay Men And Lesbians From The Pool Of Adults Eligible To Adopt, Florida's Statute Undermines The Best Interests Of Children

The prohibition on adoption by gay men and lesbians prevents child welfare experts from making the optimal child-parent match where a gay or lesbian parent can best meet the needs of a particular child. For example, a child whose best adoptive placement might be with a gay or lesbian relative—such as a lesbian aunt or a gay grandfather—rather than a non-relative will be denied that placement under the statute. Florida itself recognizes the desirability of placing children with relatives where possible. *See* Fla. Stat. ch. 39.5085 (establishing "Relative Caregiver Program"); Fla. Admin. Code r. 65C-24.001 to 24.012 (implementing Relative Caregiver Program). Placement with a familiar relative is likely to minimize any potential trauma associated with forming a relationship with a new adult caregiver. Furthermore, adoption by a gay or a lesbian relative is more likely to allow the child to maintain relationships with the rest of his family.

In many other cases, Florida's prohibition denies children, such as John Doe in this case, the opportunity for permanent placement with a familiar and loving gay foster parent or guardian who is willing and well-suited to take care of them, *cf.* Pet. App. 3a (stating "[b]y all accounts," Mr. Lofton's care for John Doe has been "exemplary"), and leaves them vulnerable to removal by the DCF. In recognition of the fact that removal from a long term placement, and specifically from the resulting attachment relationship, can be devastating to a child, Florida has emphasized that foster parents "often are the most desirable adoptive parents for children who have formed strong attachments to them." Fla. Admin. Code r. 65C-

13.009(1)(d)(8). Nationwide, 59% of adopted children are adopted by foster parents.[7] Yet as this case shows, despite the fact that Florida allows children to be cared for by gay or lesbian foster parents or guardians, Florida forecloses this promising adoption avenue to them.

Furthermore, by reducing the number of potential adoptive parents, Florida ensures that many children will never have a family of their own. Despite Florida's significant efforts to recruit a large, diverse pool of heterosexual adoptive parents, there is still a substantial shortage of adults willing to adopt, and there are still thousands of children in need of adoption.[8] According to the United States Department of Health and Human Services, 8,126 children were awaiting adoptions in Florida during fiscal year 2002.[9] Many of these children will never be adopted; they will simply "age out" of the system and will never experience the love and support of a permanent family. Yet Florida categorically disqualifies tens of thousands of potentially qualified parents from providing children with that familial love and support.[10]

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[7] *See* Children's Bureau, U.S. Dep't of Health & Human Servs. (HHS), *The AFCARS Report: Preliminary FY 2001 Estimates as of March 2003* (8), *at* http://www.acf.hhs.gov/programs/cb/publications/afcars/report8.pdf (Mar. 2003).

[8] Among other efforts to facilitate the adoption of children, Florida requires the DCF to design plans for parent recruitment, *see* Fla. Admin. Code r. 65C-16.004; participates in the Interstate Compact on the Placement of Children, *see* Fla. Stat. ch. 409.401; subsidizes the adoption of special needs children, *see* Fla. Stat. ch. 409.166; encourages low-income and African-American families to adopt, *see id.*; Fla. Stat. ch. 409.1755; operates a statewide adoption exchange, *see* Fla. Stat. ch. 409.167; and notifies the public through television, radio, and the internet of children in need of adoption, *see, e.g.*, DCF, Fla. Dep't of Health & Human Servs., *Florida's Adoption Program, at* http://www.state.fl.us/cf_web/myflorida2/healthhuman/adoption/index.shtml (Nov. 8, 2004).

[9] *See* Children's Bureau, HHS, *FY 1998, 1999, FY 2000, FY 2001 and FY 2002 Foster Care: Children Waiting for Adoption, at* http://www.acf.dhhs.gov/programs/cb/dis/tables/waiting2002.htm (Mar. 1, 2004).

[10] According to the 2000 Census, there are an estimated 41,048 same-sex couple households in Florida. *See* Tavia Simmons & Martin O'Connell,

The prohibition also undermines Florida's explicit goal of "ensur[ing] that permanent placement with the biological or adoptive family is achieved as soon as possible for every child in foster care and that no child remains in foster care longer than 1 year." Fla. Stat. ch. 39.001(1)(h). Due to the shortage of adoptive parents, even children in Florida who are fortunate enough to be adopted spend years in foster or other temporary care awaiting adoption.[11] The length of a child's stay in such care has a significant negative impact upon the child's psychological and social development. The longer a child remains in foster care, the greater the likelihood the child's attachment relationships will be qualitatively inferior and, hence, that any psychological or social problems will be irreversible.[12]

Florida's statute is especially detrimental to children with special needs, such as John Doe and John Roe, who are the toughest children to place in adoptive homes and who often wait the longest before being adopted.[13] Many States,

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Married-Couple and Unmarried-Partner Households: 2000 4, *at* http://www.census.gov/prod/2003pubs/censr-5.pdf (Feb. 2003). The 2000 Census did not collect information about the number of single gay men or lesbians.

[11] In 2002, 48% of the children adopted in Florida had spent more than one year in foster care while awaiting adoption. *See* Children's Bureau, HHS, *Time Between TPR and Finalization: October 1, 2001 to September 30, 2002, at* http://www.acf.hhs.gov/programs/cb/dis/tables/time04.htm (Mar. 2004).

[12] *See* Michael Bohman & Sören Sigvardsson, *Outcome in Adoption: Lessons from Longitudinal Studies*, in *The Psychology of Adoption* 93, 106 (David M. Brodzinsky & Marshall D. Schechter eds., 1990) ("[O]ur studies clearly indicate that decisions about the child's legal status should be made as early as possible. Any unnecessary prolongation of the socially, legally, and psychologically insecure limbo-situation of foster care should be avoided, in the best interest of the child.").

[13] Florida defines a "[s]pecial needs child" as one whose "permanent custody has been awarded to the department or to a licensed child-placing agency," Fla. Stat. ch. 409.166(2)(a), and who either has "established significant emotional ties" with foster parents, Fla. Stat. ch. 409.166(2)(a)(1), or is unlikely to be adopted due to the child's age, minority racial status, chronic medical problems, mental or psychological problems, or relationship to other siblings in foster care, Fla. Stat. ch. 409.166(2)(a)(2)(a)-(e).

including Florida, face specific "difficulties in recruiting families to adopt children with special needs"—children such as those with HIV cared for by Mr. Lofton—which makes it very difficult for States to achieve permanent placements for those children. GAO, *Rep. No. GAO-02-585, Foster Care: Recent Legislation Helps States Focus on Finding Permanent Homes for Children, but Long-Standing Barriers Remain* 38 (June 2002). The shortage of adoptive parents for special needs children has not escaped the attention of the Florida Legislature, which has explicitly found there is "a lack of permanent adoptive homes for older and disabled children." Fla. Stat. ch. 409.1673(1)(a)(5). Florida's ban on adoption by gay men and lesbians can only worsen this problem.

Nationwide there are 126,000 children awaiting adoption.[14] Florida's categorical exclusion of all gay men and lesbians as adoptive parents exacerbates that problem by "foreclos[ing] the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities[;] it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand." *Stanley*, 405 U.S. at 657.

II. THERE IS NO VALID SCIENTIFIC BASIS TO CONCLUDE THAT ADOPTION BY GAY AND LESBIAN PARENTS DISADVANTAGES CHILDREN

Social science research has established that children are not adversely affected by their parents' lesbian or gay orientation. As a result, all of the mainstream professional organizations in the fields of child health and welfare agree that there is no basis to exclude gay men and lesbians from adopting children. This consensus belies the suggestion by the court of appeals that the research on parenting by gay men and lesbians and its effects on childhood development "ha[s] yielded inconclusive and conflicting results." Pet.

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[14] *See* Children's Bureau, HHS, *National Adoption and Foster Care Statistics, at* http://www.acf.dhhs.gov/programs/cb/dis/afcars/publications/afcars.htm (Aug. 1, 2004).

App. 37a-38a. And it demonstrates that Florida's categorical ban on adoption by gay men and lesbians is not rationally related to the best interests of adoptive children.

A. Every Prominent Pediatric, Psychological, Psychiatric, And Child Welfare Organization To Address The Issue Has Determined That No Child Welfare Basis Exists For Categorically Excluding Lesbians And Gay Men From Adopting Children

The leading professional child health and child welfare organizations oppose the categorical exclusion of gay men and lesbians as adoptive parents. The policy statements issued by these organizations—outgrowths of both their professional experiences and their expert reviews of the research related to the effects of parenting by gay men and lesbians on childhood development—are striking in their similar rejection of the assumption that optimal development requires heterosexual parents. Indeed, the CWLA is unaware of any authoritative child welfare or medical organization that has taken a contrary view of the research and its policy implications.

In 2002, the American Academy of Pediatrics (AAP), the nation's oldest and largest association of pediatricians with over 60,000 pediatrician members, issued a technical report summarizing the "growing body of scientific literature demonstrat[ing] that children who grow up with 1 or 2 gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual." AAP, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 341, 341 (2002) (AAP Technical Report). The AAP relied on this "considerable body of professional literature" in adopting a formal policy supporting what is commonly known as "second-parent" adoption by same-sex partners. AAP, *Coparent or Second-Parent Adoption by*

Same-Sex Parents, 109 Pediatrics 339, 339 (2002) (AAP Policy Statement).[15]

The American Psychiatric Association (APA), which has over 35,000 physician members, has similarly emphasized that "[n]umerous studies over the last three decades consistently demonstrate that children raised by gay or lesbian parents exhibit the same level of emotional, cognitive, social, and sexual functioning as children raised by heterosexual parents," and that "optimal development for children is based not on the sexual orientation of the parents, but on stable attachments to committed and

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[15] Because of the potentially harmful consequences of a State's refusal to recognize the relationship between a child born to or adopted by one member of a same-sex couple and the other member (the "coparent" or "second parent"), *see* Barbara Bennett Woodhouse, *Children's Rights in Gay and Lesbian Families: A Child-Centered Perspective*, in *Child, Family, and State* 273, 291-293 (Stephen Macedo & Iris Marion Young eds., 2003), the focus of the AAP's policy is not surprising. As the AAP emphasized, however, the same research supports adoptions by single gay or lesbian parents. *See* AAP Technical Report, *supra*, at 341.

In opposition to the AAP Policy Statement, approximately 60 of AAP's more than 60,000 members formed the American College of Pediatricians (ACP) in 2002. *See* Pamela P. Wong, Concerned Women for America, *New Pediatricians Group Blasts AAP Endorsement of 'Gay' Parenting*, *at* http://www.cultureandfamily.org/articledisplay.asp?id=4053&department=CFI&categoryid=cfreport (June 4, 2003); *see also* ACP, *Charter Member Physicians*, *at* http://www.acpeds.org/?BISKIT=2344774610&CONTEXT=cat&cat=17 (last visited Dec. 6, 2004). Dr. Joseph Zanga, one of the ACP's charter members, has described the ACP as a group "with Judeo-Christian, traditional values that is open to pediatric medical professionals of all religions *who hold true to the group's core beliefs*: that life begins at conception; and that the traditional family unit, headed by an opposite-sex couple, poses far fewer risk factors in the adoption and raising of children." Bill Fancher & Jody Brown, American Family Ass'n, *Pro-Life Pediatric Group Stands Contrary to Established AAP*, *at* http://headlines.agapepress.org/archive/7/afa/292003e.asp (July 29, 2003) (emphasis added). On January 22, 2004, the nascent ACP issued a position statement supporting the "age-old prohibition on homosexual parenting, whether by adoption, foster care, or by reproductive manipulation." ACP, *Homosexual Parenting: Is It Time for Change?*, *at* http://www.acpeds.org/?CONTEXT=art&cat=10005&art=50&BISKIT=2684987796 (Jan. 22, 2004).

nurturing adults." APA, *Adoption and Co-parenting of Children by Same-sex Couples: Position Statement*, *at* http://www.psych.org/du/other_res/lib_archives/archives/200214.pdf (Nov. 2002). In view of this body of research, the APA adopted a formal policy supporting adoption by same-sex couples. *Id.*

The American Psychological Association, which has over 150,000 psychologist members, resolved to oppose "any discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care and reproductive health services" and to support "the protection of parent-child relationships through the legalization of joint adoptions and second parent adoptions of children being reared by same-sex couples." American Psychological Ass'n, *Resolution on Sexual Orientation, Parents, and Children*, *at* http://www.apa.org/pi/lgbc/policy/parentschildren.pdf (July 2004). The resolution was predicated on the Association's findings that:

> (1) "[t]here is no scientific evidence that parenting effectiveness is related to parental sexual orientation: lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children"; and
>
> (2) "[r]esearch has shown that the adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish."

Id.

Likewise, the American Academy of Child and Adolescent Psychiatry (AACAP), an association of over 6,500 psychiatrists, has determined that "[t]here is no evidence to suggest or support that parents with a gay, lesbian, or bisexual orientation are per se different from or deficient in parenting skills, child-centered concerns and parent-child attachments, when compared to parents with a heterosexual orientation," and further that "[o]utcome studies of children raised by parents with a homosexual or

bisexual orientation, when compared to heterosexual parents, show no greater degree of instability in the parental relationship or developmental dysfunction in children." AACAP, *Policy Statement: Gay, Lesbian, and Bisexual Parents*, *at* http://www.aacap.org/publications/policy/ps46.htm (June 1999). As a result, the AACAP resolved to oppose "any discrimination based on sexual orientation against individuals in regard to their rights as custodial or adoptive parents." *Id.*[16]

The National Association of Social Workers (NASW), the nation's preeminent organization of professional social workers with over 153,000 members, has observed:

> The literature ... undermines negative assumptions about gay men and lesbians as parents. The most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to the heterosexual parents and their children that were included in the studies.

NASW, *Social Work Speaks: Policy Statements 2000-2003* 194 (5th ed. 2000).

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[16] Two other family medical organizations have issued policy statements opposing categorical bars to adoption by gay men and lesbians. The American Academy of Family Physicians (AAFP), an association of over 93,700 family physicians, family medicine residents, and medical students, has adopted a policy of "promot[ing] a safe and nurturing environment, including psychological and legal security, for all children, including those of adoptive parents, regardless of the parents' sexual orientation." *See* AAFP, *Children's Health*, *at* http://www.aafp.org/x16320.xml (2003). In the same vein, the American Psychoanalytic Association, a professional organization of over 3,500 psychoanalysts, has unequivocally stated: "Gay and lesbian individuals and couples are capable of meeting the best interest of the child and should be afforded the same rights and should accept the same responsibilities as heterosexual parents." Am. Psychoanalytic Ass'n, *Position Statement on Gay and Lesbian Parenting*, *at* http://www.apsa-co.org/ctf/cgli/parenting.htm (May 16, 2002).

Finally, the CWLA itself opposes categorically barring gay men and lesbians from becoming adoptive parents:

> Applicants should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their race, ethnicity or culture, income, age, marital status, religion, appearance, differing life style, or *sexual orientation.*

CWLA, *CWLA Standards of Excellence for Adoption Services* § 4.7 (rev. ed. 2000) (CWLA Standards) (emphasis added). The CWLA formulated this policy based on the research conducted in, and experiences of, the fields of social work, child development, psychology, psychiatry, medicine, and sociology.[17]

B. The Court Of Appeals Suggested A Conflict Of Opinion About The Conclusions And Merits Of The Social Science Research That Does Not Exist

In concluding that Florida had a rational basis for banning gay men and lesbians from adopting, the court of appeals incorrectly characterized "the question of the effects of homosexual parenting on childhood development [as] one on which even experts of good faith reasonably disagree" and the Florida legislature as simply having "credit[ed] one side of the debate over the other." Pet. App. 38a. In reality, no such split of authority or opinion exists.

The professional organizations discussed above all oppose categorical bars on adoption by gay men and lesbians because study after study consistently has demonstrated both that gay and lesbian parents are as capable as heterosexual parents and that children of gay and lesbian parents fare just as well as children of heterosexual parents.

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[17] *See* CWLA Standards, *supra*, at v. The North American Council on Adoptable Children (NACAC), an organization of child welfare professionals and adoption agencies, as well as foster and adoptive parents and advocacy groups focused on the needs of adoptive children, has adopted the same policy. *See* NACAC, *NACAC Position Statements: Gay and Lesbian Adoptions and Foster Care, at* http://www.nacac.org/pub_statements.html#gay (Apr. 14, 2002).

Although a complete review of the literature is beyond the scope of this brief, this body of research, which spans over 25 years, is essentially unanimous with respect to the following key findings:

- Lesbian mothers and gay fathers are as devoted to their children as heterosexual parents.[18]
- Lesbian mothers and gay fathers perform as well as heterosexual parents on every measure of parenting skills.[19]
- Children of gay and lesbian parents do not experience higher rates of, or more severe, emotional or behavioral problems than children of heterosexual parents.[20]
- Children of gay and lesbian parents fare as well on assessments of peer relationship quality and popularity among peers as children of heterosexual parents.[21]

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[18] *See, e.g.*, Charlotte J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. Marriage & Fam. 1052, 1056 (2000) (review of research reveals no significant differences in warmth shown by lesbian and heterosexual mothers toward children); Jerry J. Bigner & Frederick W. Bozett, *Parenting by Gay Fathers, in* 14 Marriage and Family Review 155, 164 (Frederick W. Bozett & Marvin B. Sussman eds., 1990) (research has demonstrated no significant differences between gay fathers' and heterosexual fathers' expressions of intimacy toward children).

[19] *See, e.g.*, Bigner & Bozett, *supra* n.18, at 163 (review of literature reveals "[n]o differences ... between heterosexual and homosexual fathers in problem-solving, providing recreation for children, encouraging their autonomy, handling problems relating to childrearing, having relatively serious problems with children, or having generally positive relationships with children"); Ellen C. Perrin, *Sexual Orientation in Child and Adolescent Health Care* 115 (2002) (review of literature demonstrates that lesbian mothers have more successful parenting skills than heterosexual comparison groups).

[20] *See, e.g.*, Perrin, *supra* n.19, at 118-126 (review of literature reveals no significant differences in emotional and conduct difficulties between children of gay or lesbian parents and children of heterosexual parents).

[21] *See* Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 Child Dev. 1025, 1033-1034 (1992) (review of existing research reveals no significant differences in quality of peer relationships or popularity

- No relationship exists between parental sexual orientation and a child's cognitive abilities and development.[22]
- Children of gay and lesbian parents are not more likely to be gay and lesbian themselves.[23]
- Lesbians and gay men have the same capacity as heterosexuals to form stable, long-lasting, intimate relationships that are comparable in quality to heterosexual relationships and, therefore, they can provide stable, two-parent families as well as heterosexual couples.[24]

In short, this body of research has demonstrated that lesbian and gay parents can and do provide loving and secure parent-child relationships that afford the same benefits to

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among peers). One study has demonstrated that *if* children of gay and lesbian parents are teased, they are more likely than their peers to be teased about their families, but that they are not more likely than other children to be teased. *See* K. Vanfraussen et al., *What Does It Mean for Youngsters to Grow Up in a Lesbian Family Created by Means of Donor Insemination?*, 20 J. Reproductive & Infant Psychology 237 (2002).

[22] *See, e.g.*, Judith Stacey & Timothy Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159, 172 (2001) ("[A]cross studies, no relationship has been found between parental sexual orientation and measures of children's cognitive ability.").

[23] *See, e.g.*, Patterson, *supra* n.21, at 1031-1032 ("[S]exual preference among offspring of gay and lesbian parents was found in every study to fall within normal bounds."). There is some evidence indicating that children of gay or lesbian parents may be more comfortable acknowledging or acting on same-sex attraction if they have such feelings, which is hardly surprising. *See* Stacey & Biblarz, *supra* n.22, at 170-171. Nonetheless, the majority of children raised by gay or lesbian parents, like most children raised by heterosexual parents, grow up to be heterosexual. *Id.* Sexual orientation should not be confused with sex-role behavior, which refers to behaviors and attitudes that society typically associates with the male or female gender. Some studies have found daughters of lesbian mothers to be less rigidly sex-stereotyped. *See* Patterson, *supra* n.21, at 1030 (discussing study in which daughters of lesbians were found to be less rigidly sex-stereotyped (*e.g.*, playing with both dolls and trucks) than daughters of heterosexual parents).

[24] *See, e.g.*, Patterson, *supra* n.18, at 1053 (review of research reveals "no differences as a function of sexual orientation on any of the measures of relationship quality").

children as heterosexual parents. The facts that these studies have been published in reputable, peer-reviewed journals and relied upon by knowledgeable experts are testaments to the soundness of the studies' methodologies.[25]

In contrast, no reliable study has identified any risk to children from being raised by gay parents. In suggesting that there were "other studies [finding] that children raised in homosexual households fare [worse] than children raised in similarly situated heterosexual households," *see* Pet. App. 36a, the court of appeals pointed to a single study purporting to find that children of gay parents have an increased risk of sexual victimization by a parent and suffer from a disproportionately high incidence of emotional distress. *See id.* at 825 n.25 (citing Paul Cameron & Kirk Cameron, *Homosexual Parents*, 31 Adolescence 757, 770-774 (1996)). But, as the CWLA and other *amici* advised the court of appeals, Paul Cameron, the author of this study, has been widely discredited for misrepresenting and misconstruing sociological research on homosexuality and its effects. The APA expelled Cameron, and the American Sociological Association denounced him for willfully misrepresenting research. *See* Stacey & Biblarz, *supra* n.22, at 161. Moreover, a federal district court determined that Cameron's conclusions, and specifically his conclusion that homosexuals abuse children at a greater rate than heterosexuals, constituted a "total distortion" of the data. *See Baker* v. *Wade*, 106 F.R.D. 526, 536 (N.D. Tex.), *rev'd on other grounds*, 769 F.2d 289 (5th Cir. 1985); *see also Gay*

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[25] Because the research has shown that children of gay and lesbian parents fare just as well as children of heterosexual parents, ideological opponents of parenting by gay men and lesbians have challenged the body of research as flawed. *See, e.g.*, Robert Lerner & Althea K. Nagai, Marriage Law Project, *No Basis: What the Studies* Don't *Tell Us About Same-Sex Parenting, at* http://marriagelaw.cua.edu/publications/nobasis.pdf (Jan. 2001), *cited in* Pet. App. 36a, n.24. These attacks are red herrings. They attempt to hold this specific area of research to impractical standards that are not generally applicable to psychological research. They also fail to produce any evidence supporting the contrary position that lesbians and gay men are less capable parents.

Student Servs. v. *Texas A&M Univ.*, 737 F.2d 1317, 1330 (5th Cir. 1984) (dismissing Cameron's conclusions as speculative and without historical or empirical basis).

The only other source cited by the court of appeals as evidence of "other [conflicting] studies," Pet. App. 36a, was not itself a study but a survey of the body of research. *Id.* n.25 (citing Stacey & Biblarz, *supra* n.22). And, in fact, that survey concluded that there are no significant developmental differences between children of gay and lesbian parents and children of heterosexual parents. Indeed, the authors of the survey forcefully concluded that "[b]ecause every relevant study to date shows that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships or on children's mental health or social adjustment, there is no evidentiary basis for considering parental sexual orientation in decisions about children's 'best interest.'" Stacey & Biblarz, *supra* n.22, at 176. The authors went on to note that any measurable differences between children of lesbian and gay parents and those of heterosexual parents "cannot be considered deficits .... They either favor the children with lesbigay parents, are secondary effects of social prejudice, or represent 'just a difference' ...." *Id.* at 177.[26]

In sum, the reasonable debate between experts posited by the court of appeals does not exist. Rather, the evidence that parenting by gay men and lesbians is not harmful to children is so well established, and so far beyond reasonable scientific dispute, that it is irrational for Florida to believe

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[26] Even if doubt remained as to the parenting qualifications of some gay men and lesbians, Florida's categorical exclusion would lack a rational basis. "Procedure by presumption is always cheaper and easier than individualized determination." *Stanley*, 405 U.S. at 656-657. Yet, because the DCF conducts a detailed evaluation of each candidate's parenting qualifications, there is no reason to use sexual orientation as a proxy for capacity to parent. *Cf. Orr* v. *Orr*, 440 U.S. 268, 281 (1979) ("Under the [state alimony] statute, individualized hearings at which the parties' relative financial circumstances are considered *already* occur. There is no reason, therefore, to use sex as a proxy for need." (internal citations omitted)).

that the best interests of children are served by prohibiting gay men and lesbians from adopting.

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Because Florida's categorical prohibition does not benefit children but instead is detrimental to their best interests, the only purpose of the prohibition can be to express animus toward an unpopular group. *See Romer* v. *Evans*, 517 U.S. 620, 634-635 (1996). On several occasions this Court has held it "illogical and unjust" and a violation of equal protection for a State to punish innocent children in order to express disapproval of an adult's actions. *See Plyler* v. *Doe*, 457 U.S. 202, 220 (1982) (stating statute excluding children of illegal aliens from public education "does not comport with fundamental conceptions of justice," where state is concerned with alleged misconduct of parents, not children); *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972) (stating statute denying equal recovery rights to illegitimate children is "illogical and unjust" and "contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing"). Just so here; it is "illogical and unjust" for Florida to punish the thousands of children in Florida in need of the love and support of a family they can call their own by denying them the opportunity to be adopted by loving and capable adults.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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